IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.23 OF 2005

Commissioner of Customs (EP) ..Appellant.

V/s.

M/s. Ratilal Hemraj & Co. & Ors. ..Respondents.

Mr.A.S.Rao i/b. Dr.T.C. Kaushik for appellant.

Mr.Madhur Baya for respondent No.1.

None for respondent No.2.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 15TH SEPTEMBER, 2005.

P.C. :-

Heard learned counsel for the appellant and respondent No.1. In spite of service, none for respondent No.2.

2. Appellant is allowed to withdraw its appeal, to the extent it is aggrieved by the impugned order in favour of respondent No.2, with liberty to file a separate appeal on the same cause of action. Appellant to carry out necessary amendment in the memo of appeal during the course of the day deleting the name of respondent No.2 from array of parties.

3. So far as the respondent No.1 (now sole respondent) is concerned, in view of the clear finding recorded by the Collector of Customs that the illegal import alleged to be made by respondent No.2 could not have been within the knowledge of the respondent M/s.Ratilal Hemraj. There is also a positive finding that the said respondent was a bona fide purchaser for consideration coupled with the finding that the respondent M/s. Ratilal Hemraj was not a party to the alleged illegal activities and / or alleged unauthorised import allegedly made by respondent No.2.

4. In the above view of the matter, no substantial question of law arises in the appeal.

5. So far as the role of the deleted respondent No.2 is concerned, we express no opinion at this stage in this appeal. We say nothing so far his role in the subject import is concerned. We may not be understood to have expressed any opinion. In the event of any fresh appeal, matter would be examined on its own merits.

6. So far as the present appeal is concerned, we dismiss it in limine with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)